United States Department of Labor
Employees' Compensation Appeals Board

A.L., Appellant	)	
and	)	**Docket No. 21-0151**
	)	**Issued: January 21, 2022**
U.S. POSTAL SERVICE, ASTRODOME POST OFFICE, Houston, TX, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 12, 2020 appellant filed a timely appeal from a June 10, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the issuance of the June 10, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id*.

ISSUE

The issue is whether appellant has met her burden of proof to establish disability from work, commencing March 30, 2020, causally related to her accepted July 14, 2016 employment injury.

FACTUAL HISTORY

On July 15, 2016 appellant, then a 30-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 14, 2016 she developed a respiratory condition while in the performance of duty. She claimed that she became nauseous, dizzy, and really hot on her route and returned to sit in her vehicle. Later, appellant tried to exit the vehicle and she fell to the bottom of the vehicle. On the reverse side of the claim form the employing establishment indicated that she stopped work on the date she filed her claim.

On August 14, 2014 OWCP initially accepted appellant's claim for unspecified heat exhaustion. It later expanded the acceptance of the claim to include strain of ligaments of the lumbar spine; postconcussional syndrome; strain of an unspecified muscle of the fascia and tendon at the right shoulder and upper arm level, initial encounter; strain of muscle, fascia, tendon of the lower back and right hip, initial encounter; other spondylolysis with myelopathy in the cervical and lumbar regions; and other spondylolysis with radiculopathy in the lumbar and lumbosacral regions. OWCP paid appellant wage-loss compensation on the supplemental rolls as of August 30, 2016.

On February 14, 2019 appellant accepted a February 8, 2019 job offer for a modified city carrier position working six hours per day.

OWCP subsequently received a series of medical reports dated February 21 through March 30, 2020 by Dr. Novarro C. Stafford, an attending family practitioner. In his reports, Dr. Stafford noted a history of the accepted July 14, 2016 employment injury and appellant's medical treatment. He also noted the accepted conditions of unspecified heat exhaustion, postconcussional syndrome, other spondylosis with radiculopathy of the lumbar and lumbosacral regions, strain of an unspecified muscle of the fascia and tendon at the right shoulder and upper arm, strain of the muscle, fascia, and tendon of the lower back and right hip, and other spondylosis with myelopathy of the lumbar and cervical regions. Dr. Stafford provided examination findings. He noted that appellant had continued limited mobility and disability associated with her cervical neck, right shoulder, right arm, right hip, right upper and lower leg, and lumbar back. Dr. Stafford opined that on July 14, 2016 she sustained an injury that was directly caused by her work duties at the employing establishment.

In duty status reports (Form CA-17) dated January 8, 2019 and March 2 through 30, 2020, Dr. Stafford indicated a history of the July 14, 2016 employment injury. He reiterated his prior opinion that appellant's accepted diagnoses were due to injury. Dr. Stafford initially opined that she was able to work six hours per day with permanent work restrictions. In the March 30, 2020 Form CA-17 report, he advised that appellant was unable to work.

In a March 26, 2020 lumbar spine magnetic resonance imaging (MRI) scan, Dr. Chad Porter, a Board-certified diagnostic radiologist, provided an impression of status post thoracolumbar spinal fusion for scoliosis repair. He also provided an impression of L5-S1 grade 1 (2 millimeters (mm)) anterolisthesis with uncovering of the intervertebral disc, a posterior right central 2.0 mm disc protrusion (herniation) that indented the thecal sac, and patent neural foramina.

A report from physical therapists dated April 3 and 6, 2020 addressed the treatment of appellant's right hip pain due to a work injury.

On April 13, 2020 appellant filed a claim for compensation (Form CA-7) for disability from work for the period February 10 through April 30, 2020. An attached time analysis (Form CA-7a) of even date indicated that she was claiming two hours of leave without pay (LWOP) per day from February 10 through March 27, 2020 due to her six-hour per day work restriction. Appellant also claimed eight hours of LWOP per day from March 30 through April 30, 2020 because her physician had removed her from work.

OWCP, in an April 16, 2020 development letter, informed appellant of the deficiencies of her wage-loss compensation claim for the period March 30 through April 30, 2020. It advised her of the type of medical evidence needed and afforded her 30 days to respond.

In a separate letter of even date, OWCP notified appellant that it had authorized payment of 69.81 hours of LWOP due to her six-hour per day work restriction for the period February 10 through March 27, 2020. In an April 21, 2020 letter, it augmented its April 16, 2020 development letter to reflect that appellant would be paid compensation for 57.81 hours of LWOP as verified by the employing establishment for the period February 10 through March 27, 2020.

OWCP received additional daily therapy treatment forms dated April 20, 24, and 27, and May 20, 2020 addressing the treatment of appellant's right upper extremity and right lower extremity pain.

A physical therapy evaluation dated April 3, 2020 from Dr. Stafford provided an assessment that appellant had a history of lumbar, cervical, right shoulder, and right hip pain due to a work-related injury. Dr. Stafford noted that lately, she had increased symptoms and activity exacerbated her pain. Appellant's right hip pain was her most concern, which she rated as 8 out of 10. Dr. Stafford indicated that she had functional deficits that included difficulty with all daily activities including ambulation and specifically sweeping.

On June 2, 2020 appellant filed an additional Form CA-7 for disability from work for the period April 26 through June 23, 2020. An attached Form CA-7a of even date indicated that she was claiming eight hours of LWOP per day from May 18 through June 23, 2020 due to total disability.

In Form CA-17 reports dated April 30 and May 28, 2020, Dr. Stafford reiterated that the accepted conditions of unspecified heat exhaustion, postconcussional syndrome, strain of unspecified muscle, fascia, and tendon at the right shoulder and upper arm level, strain of muscle, fascia, and tendon of the lower back, and other spondylosis with radiculopathy in the lumbar region were due to the July 14, 2016 employment injury. He also indicated that appellant remained disabled from work and had permanent work restrictions.

A May 13, 2020 physical therapy evaluation from Dr. Stafford, restated appellant's pain history and provided an assessment that she was able to complete some daily chores that she was previously unable to complete. Regarding functional deficits, Dr. Stafford noted that she still had painful days and must limit activities and take pain medication as needed.

Daily therapy treatment forms dated June 1 and 3, 2020 from the prior physical therapists continued to address the treatment of appellant's right hip pain.

OWCP, by decision dated June 10, 2020, denied appellant's claim for disability from work, commencing March 30, 2020. It found that the medical evidence of record was insufficient to establish disability during the claimed period due to the accepted employment injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[4] For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.[5] Whether a particular injury causes an employee to become disabled from work, and the duration of that disability, are medical issues that must be proven by a preponderance of probative and reliable medical opinion evidence.[6]

Under FECA, the term disability means an incapacity because of an employment injury, to earn the wages the employee was receiving at the time of the injury.[7] When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, prevent the employee from continuing in his or her employment, he or she is entitled to compensation for any loss of wages.[8]

To establish causal relationship between the disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such causal relationship.[9] The opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of

[3] *Supra* note 1.

[4] *See D.S.*, Docket No. 20-0638 (issued November 17, 2020); *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *C.R.*, Docket No. 18-1805 (issued May 10, 2019); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *See L.F.*, Docket No. 19-0324 (issued January 2, 2020); *T.L.*, Docket No. 18-0934 (issued May 8, 2019); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

[6] *See* 20 C.F.R. § 10.5(f); *N.M.*, Docket No. 18-0939 (issued December 6, 2018).

[7] *Id.* at § 10.5(f); *see, e.g., G.T.*, 18-1369 (issued March 13, 2019); *Cheryl L. Decavitch*, 50 ECAB 397 (1999).

[8] *G.T., id.*; *Merle J. Marceau*, 53 ECAB 197 (2001).

[9] *See S.J.*, Docket No. 17-0828 (issued December 20, 2017); *Kathryn E. DeMarsh*, 56 ECAB 677 (2005).

the relationship between the diagnosed condition and the specific employment factors identified by the employee.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish disability from work, commencing March 30, 2020, causally related to her accepted July 14, 2016 employment injury.

In support of her claim for compensation, appellant submitted reports from Dr. Stafford. In his Form CA-17 reports dated January 8, 2019 through May 28, 2020, Dr. Stafford opined that her accepted conditions of unspecified heat exhaustion, postconcussional syndrome, strain of unspecified muscle, fascia, and tendon at the right shoulder and upper arm level, strain of muscle, fascia, and tendon of the lower back, and other spondylosis with radiculopathy in the lumbar region were due to the July 14, 2016 employment injury. Further, he initially determined that appellant was able to work six hours per day with permanent work restrictions, but subsequently advised that she was unable to work as of March 30, 2020 and continuing. Although Dr. Stafford opined that she was disabled during the claimed period, he failed to explain how the July 14, 2016 employment injury was responsible for her disability and why she was unable to perform the duties of her position during the period claimed. A mere conclusion without medical rationale supporting a period of disability due to the accepted employment condition is insufficient to meet a claimant's burden of proof.[11] Thus, Dr. Stafford's reports are insufficient to establish appellant's disability claim.

In his narrative reports dated February 21 through March 30, 2020, Dr. Stafford again diagnosed the accepted conditions and opined that they were causally related to the July 14, 2016 employment injury. However, he did not offer an opinion regarding whether she was totally disabled from work during the claimed period due to the accepted injury. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.[12] Therefore, the Board finds that Dr. Stafford's reports are insufficient to establish appellant's disability claim.

Likewise, Dr. Stafford's remaining physical therapy evaluations dated April 3 and May 13, 2020 are also insufficient to establish that appellant's disability from March 30 through April 30, 2020 and continuing was causally related to the July 14, 2016 employment injury. He primarily addressed her right hip pain, and initially found that she had functional deficits that included difficulty with all daily activities including ambulation and specifically sweeping, and subsequently advised that she was able to complete some daily chores that she was previously

[10] *C.B.*, Docket No. 18-0633 (issued November 16, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[11] *See C.B.*, Docket No. 19-0464 (issued May 22, 2020); *S.H.*, Docket No. 19-1128 (issued December 2, 2019); *T.L.*, Docket No. 18-0934 (issued May 8, 2019); *Sandra D. Pruitt*, 57 ECAB 126 (2005).

[12] *See T.S.*, Docket No. 20-1229 (issued August 6, 2021); *J.M.*, Docket No. 19-1169 (issued February 7, 2020); *A.L.*, 19-0285 (issued September 24, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

unable to complete, but still had painful days that caused her to limit her activities and take pain medication. However, Dr. Stafford did not offer an opinion regarding whether appellant was totally disabled from work during the claimed period due to the accepted injury. Thus, the Board finds that his evaluations are of no probative value and are insufficient to establish her disability claim.[13]

Appellant also submitted Dr. Porter's March 26, 2020 lumbar spine MRI scan report. The Board has held, however, that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the accepted employment injuries resulted in her period of disability on specific dates.[14]

The record also contains physical therapy treatment notes. Certain healthcare providers such as physical therapists, nurses, physician assistants, and social workers are not considered physicians as defined under FECA. Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[15] Therefore, this evidence is also insufficient to establish the claim.

For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work during the claimed period due to the accepted employment injury.[16] Because appellant has not submitted rationalized medical opinion evidence to establish employment-related total disability during the claimed period due to her accepted conditions, the Board finds that she has not met her burden of proof to establish her claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish disability from work, commencing March 30, 2020, causally related to her accepted July 14, 2016 employment injury.

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[13] *Id*.

[14] *See T.S., supra* note 12; *D.M.*, Docket No. 20-0548 (issued November 25, 2020); *O.C.*, Docket No. 20-0514 (issued October 8, 2020); *R.J.*, Docket No. 19-0179 (issued May 26, 2020).

[15] Section 8101(2) of FECA provides that the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *see also T.S., id.*; *F.H.*, Docket No. 18-0160 (issued August 23, 2019); *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (physical therapists); *J.L.*, Docket No. 17-1207 (issued December 8, 2017) (a physical therapist is not considered a physician under FECA).

[16] *Supra* note 5.

ORDER

IT IS HEREBY ORDERED THAT the June 10, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 21, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board